IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of themselves and others similarly situated,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
GEORGE VALDEZ, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
DAREN K. MARGOLIN, Director for Executive Office of Immigration Review, in his official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

DEFENDANTS' MOTION TO STAY THE ANSWER DEADLINE OR, IN THE ALTERNATIVE, TO REQUIRE FULL BRIEFING ON THE MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), Respondents-Defendants ("Defendants")[1] move stay the answer deadline in this case pending

[1] Pursuant to Fed. R. Civ. P. 25(d), George Valdez, in his official capacity as Acting Director of the Denver Field Office, U.S. Immigration and Customs Enforcement, has automatically been substituted as a party.

resolution of the pending appeal.[2] But if the Court does not stay the answer deadline, it should as a matter of efficiency and fairness require full briefing on the motion to dismiss that Defendants intend to file if the answer deadline is not stayed, requiring Defendants to file the motion to dismiss within seven days of its order.

BACKGROUND

As the Court is aware, this case has been appealed to the Tenth Circuit. The procedural history of this case before and after the appeal is set forth below, as relevant to defining the scope of the district court case and the appeal.

I. Proceedings before the appeal

This case was originally filed as a habeas petition. ECF No. 1. Plaintiff, a noncitizen who entered the country without inspection, challenged his detention on the ground that he was improperly being detained under a provision of the Immigration and Nationality Act ("INA") that does not provide for release on bond (8 U.S.C. § 1225(b)(2))

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[2] Pursuant to D.C.COLO.LCivR 7.1(a), undersigned counsel for Defendants conferred with counsel for Plaintiff via email regarding the basis for this motion. Counsel for Plaintiff indicated that Plaintiff opposes the relief requested in this motion. As part of conferral, undersigned counsel for Defendants asked for Plaintiff's position on the possibility of deferring resolution of the motion to dismiss pending resolution of the appeal. Counsel for Plaintiff stated the following via email:

> Plaintiff disagrees with your client's position regarding *Coinbase* and the Court's authority to resolve the motion while the appeal is pending. Despite this disagreement, as a practical matter, we are unopposed to the motion to dismiss being held in abeyance until the Tenth Circuit decides the substantive issues in this case or another case raising the same issues. Our lack of opposition is further conditioned on your agreement that Plaintiff will not need to respond to the motion to dismiss until 21 days after the mandate issues in the appeal.

and should, instead, have been detained under a different provision that does (8 U.S.C. § 1226(a)). *See generally id.* He sought immediate release from Immigration and Customs Enforcement ("ICE") custody or, in the alternative, a bond hearing. *Id.* at 15 (prayer for relief).

On September 2, 2026, Plaintiff then filed a First Amended Complaint, now styled as a class action civil complaint, but in which he still challenged the legal basis of his detention. ECF No. 6. Plaintiff continued to seek the same relief for himself, but also challenged—on behalf of himself and a putative class—detention without bond on the grounds that such detention violated (1) 8 U.S.C. § 1226(a) (Count 1), (2) regulatory provisions implementing 8 U.S.C. § 1226(a) (Count II); (3) the Administrative Procedure Act ("APA") (Count III), and (4) the Due Process Clause (Count IV). ECF No. 6 ¶¶ 73-89. As relief, Plaintiff requested that the Court issue a writ of habeas corpus requiring Defendants to release Plaintiff immediately or grant him a bond hearing under 8 U.S.C. § 1226. *Id.* at 26 (prayer for relief). He also requested that the Court "[d]eclare that Defendants' policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Plaintiff . . . and the Class, violates the INA, its implementing regulations, the APA, and the Due Process Clause of the Fifth Amendment." *Id.* at 25. He also requested that the Court "[s]et aside application of Defendants' unlawful detention policy as to the class members pursuant to 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional rights." *Id.* at 26.

On September 3, 2025, Plaintiff moved for a temporary restraining order and preliminary injunction, ECF No. 14, and for class certification for other noncitizens who

also are, or will be (in the government's view), ineligible for bond because they are detained under 8 U.S.C. § 1225(b)(2) rather than 8 U.S.C. § 1226(a), ECF No. 15.

The Court subsequently granted Petitioner release from detention. Specifically, it granted preliminary injunctive relief, ordering Plaintiff's immediate release pending a bond hearing and enjoining the transfer or removal of members of the proposed class. ECF No. 33 at 35–36. In weighing Plaintiff's likelihood of success on the merits, the Court addressed only Count I—Plaintiff's contention that he was unlawfully detained under § 1225(b)(2) rather than § 1226(a). *See id.* at 10-22. Plaintiff was subsequently released. ECF No. 49 at 10.

On November 21, 2025, the Court granted class certification "for purposes of [Plaintiff's] declaratory judgment claim for relief." ECF No. 47 at 14. The Court "decline[d] to certify a class for [the] APA claim at this stage" but indicated that it would "address doing so later if it becomes necessary to resolve the matter." *Id.* at 3. Accordingly, the Court denied, without prejudice, Plaintiff's request to certify the class for his vacatur claim for relief under the APA. *Id.* at 14.

II. The appeal

Defendants have filed an appeal of both the Court's Order granting the Motion for a Temporary Restraining Order ("TRO"), ECF No. 33, and the Court's Order granting the Motion for Class Certification, ECF No. 47, to the Tenth Circuit Court of Appeals. ECF No. 68. That appeal remains pending. *See Mendoza-Gutierrez v. Baltasar*, No. 25-1460, Doc. 18 (10th Cir. Feb. 18, 2025) (ordering appellant's brief due on March 11, 2026). The appeal involves a challenge to this Court's order determining that Plaintiff

should be released from detention based on this Court's interpretation of 8 U.S.C. § 1225(b)(2) and a challenge to this Court's order enjoining transfer or removal of class members. *See id.*, Doc. 11 (10th Cir. Dec. 30, 2025) (docket statement identifying issues presented).

III. Proceedings in the district court since the appeal was filed.

Since the appeal was filed, certain filings have been made in this district court case, despite the Tenth Circuit appeal.

On November 24, 2025, Plaintiff filed a partial motion for summary judgment on behalf of himself and the class. ECF No. 49. In that motion, Plaintiff argued that declaratory judgment was warranted based on an interpretation of 8 U.S.C. §§ 1225 and 1226 and the implementing regulations. *Id.* at 11-21. Plaintiff also contended that the "dispute is fundamentally legal in nature and can be decided summarily." *Id.* at 11 (internal quotation marks omitted). Defendants responded to the motion, arguing—among other things—that this case is really a habeas and thus the sought after declaratory judgment is not proper. *See* ECF No. 58. Plaintiff replied in support of the motion. ECF No. 69. The Court has not ruled on that motion.

On February 6, 2026, Plaintiff filed a Second Amended Complaint. ECF No. 89. The Second Amended Complaint added new allegations. Plaintiff alleged that on May 22, 2025, the BIA issued an unpublished decision holding that noncitizens who entered the U.S. without inspection are applicants for admission who are seeking admission and thus are subject to detention under 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 41. He also alleged that on July 8, 2025, ICE announced a new policy treating noncitizens present in the

United States without inspection as subject to detention under § 1225(b)(2)(A). *Id.* ¶¶ 42-43. He also alleges that since he filed the first Amended Complaint, the Board of Immigration Appeals has issued a published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which required individuals (like Plaintiff) who entered without inspection, to be detained under § 1225(b)(2)(A). *Id.* ¶ 44.

Plaintiff brings essentially the same four challenges to detention in the Second Amended Complaint. In Counts I and II, Plaintiff contends that Defendants are violating the INA and its implementing regulations by detaining Plaintiff and class members under 8 U.S.C. § 1225(b)(2) rather than § 1226(a). *Id.* ¶¶ 76-83. In Count III, Plaintiff contends that Defendants' "detention of Mr. Mendoza Gutierrez and the class members pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution." *Id.* ¶ 86. Specifically, Plaintiff claims that Defendants "do not have statutory authority under § 1225 to detain" him or any members of the class. *Id.* Plaintiff requests that the Court "vacate and set aside" Defendants' policy denying class members individualized custody determinations and the BIA decision in *Matter of Hurtado* (as well as the earlier unpublished BIA decision that reached the same conclusion). *Id.* ¶ 87. In Count IV, Plaintiff contends that "Defendants' mandatory detention of Plaintiff[] and the proposed class without consideration for release on bond or access to a bond hearing violates their due process rights." *Id.* ¶ 92.

ARGUMENT

I. The Court should stay the answer deadline.

A trial court possesses broad authority to stay proceedings. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Id.* "[T]he decision to grant a stay . . . is 'generally left to the sound discretion of district courts.'" *Ryan v. Gonzales*, 568 U.S. 57, 74 (2013) (quoting *Schriro v. Landrigan*, 550 U.S. 456, 473 (2007)).

There are good reasons that the Court should stay the answer deadline in this case. In particular, a stay of the answer deadline is appropriate given the pending appeal before the Tenth Circuit. The extent to which the Court has jurisdiction to rule on a motion to dismiss depends on the scope of the divestiture of the Court's jurisdiction based on the pending appeal.

Defendants have filed a notice of appeal of the Court's Order on the Motion for a TRO. ECF No. 68. That notice of appeal grants jurisdiction to the Tenth Circuit to review the injunction at issue. *See* 28 U.S.C. § 1292(a)(1) (providing courts of appeals "jurisdiction of appeals from . . . [i]nterlocutory orders of the district courts . . . granting . . . injunctions"). In *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023), the Supreme Court clarified the extent of the rule that an appeal "divests the district court of its control over those aspects of the case involved in the appeal." *Id.* at 740 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). The Court announced a

sweeping view of this rule, holding that this jurisdictional limit "*requires* an automatic stay of district court proceedings that relate to *any aspect* of the case involved in the appeal." *Id.* at 744 (emphases added). The Court explained that "it makes no sense for" a district court to address issues "while the court of appeals cogitates on" those issues. *Id.* at 741 (internal quotation marks omitted).

This sweeping rule counsels against resolving a motion to dismiss at this time. The Court's orders that are part of the pending appeal include the Court's Order on the Motion for a TRO, ECF No. 33, and Order on the Motion for Class Certification, ECF No. 47. The Court could run afoul of the jurisdictional rules articulated by the Supreme Court in *Coinbase* if it were to rule on an aspect of the motion to dismiss that impacted the Tenth Circuit's consideration of the Order on the Motion for a TRO and the Order on the Motion for Class Certification. For example, when the Court granted the Motion for a TRO and enjoined transfer of class members, if the Court relied at all for its jurisdiction (including a waiver of sovereign immunity) on Plaintiff's invocation of the APA, the Court would lack jurisdiction to make rulings on Plaintiff's APA claim here.

To ensure it respects the Tenth Circuit's jurisdiction over the pending appeal, the Court should stay the answer deadline until the Tenth Circuit resolves the pending appeal.

A stay would also be appropriate in light of recent developments in the nationwide class action which is dealing with similar issues to those raised by Plaintiff here. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873 (C.D. Cal.). In *Maldonado Bautista*, the Court recently vacated *Matter of Hurtado* and the government

appealed that order. *See id.*, ECF No. 116 (Feb. 18, 2026) (order vacating *Matter of Hurtado*); *id.*, ECF No. 117 (Feb. 20, 2026) (notice of appeal of ECF No. 116). The government sought a stay of that order, which the district court denied on February 25, 2026. *See id.*, ECF No. 119 (Feb. 20, 2026) (government requesting stay of ECF No. 116 pending appeal); *id.* ECF No. 121 (Feb. 25, 2026) (denying motion to stay).

II. If the Court does not stay the answer deadline, it should require full briefing on the motion to dismiss the Second Amended Complaint.

If the Court were to determine that a stay is not appropriate, it should order the parties to proceed with full motion to dismiss briefing, requiring Defendants to file the motion to dismiss to be filed within seven days of its order. As noted above, *supra* at p. 2 n.2, during conferral Plaintiff's counsel opposed a stay but proposed holding the motion to dismiss briefing in abeyance until after resolution of the pending appeal, but only after Defendant had filed their motion to dismiss. Defendants do not believe pausing Plaintiff's response to the motion to dismiss until after the appeal would be either fair or efficient. Accordingly, to the extent that the Court denies the motion to stay the answer deadline, it should order full briefing on the motion to dismiss to proceed and require Defendants to file the motion to dismiss within seven days of its order.

CONCLUSION

Given the unique procedural posture of this case, the Court should stay the answer deadline until after resolution of the appeal pending before the Tenth Circuit. If the Court denies the request to stay the answer deadline, it should require the parties to proceed with full briefing on the motion to dismiss, requiring Defendants to file the motion to dismiss within seven days of its order.

Dated: February 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Benjamin Gibson
Benjamin Gibson
U.S. Attorney's Office